

The Need For Medical Billing Audits in a Post *Howell* Alternative Universe

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Although the Supreme Court held in *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal. 4th 541 that an insured personal injury plaintiff is limited to recovering the lesser of what is actually paid or the reasonable value of medical services, there is a continuing need for medical billing audits. Why? Because plaintiff's attorneys want more money and will stop at nothing to circumvent the *Howell* decision. The latest tactic when a plaintiff has private health insurance or Medicare/Medi-Cal is to simply not bill the insurance for the treatment and have the provider sell off its lien to a third party "factoring" company who then assumes the risk of recovery from the defendant. Even in cases where private health insurance has paid for the treatment, many judges either disagree with the *Howell* decision or simply do not understand it and continue to allow plaintiffs to present evidence of the "billed" charges as the reasonable value of the care provided.

According to Nancy Michalski, RN, a medical billing expert, personal injury litigation is an alternative universe where "billed" charges actually have any significance. The real world uses actual medical marketplace pricing as the benchmark for determining reasonable value. The reasonable value is derived from a number of sources including national pricing databases which are a composite of amounts actually paid based on ICD-10 codes (International Classification of Diseases) and service classification: professional services, inpatient, outpatient, medications, and durable medical equipment. Secondary databases may also be used to establish reasonable value at a community level by comparing charges and amounts paid at several local hospitals. Because reasonable value is not tied to any health plan fee schedule it does not run afoul of the collateral source rule. In fact, reasonable value is what private health care plans, health maintenance organizations, preferred provider organizations and Medicare use as the benchmark for setting prices.

The defense should consider retaining a medical billing expert in any case where a medical lien is being asserted whether the Plaintiff is insured or not. A medical billing expert should also be retained in cases with high medical bills (>\$100k); cases with high surgery charges; spine injuries; and where surgery

centers are involved. This is so because some medical providers artificially inflate charges for casualty carriers. For example, Ms. Michalski cites an example of a casualty carrier being charged \$11,600 for an epidural injection which would otherwise have been billed out at \$1,665.00 and paid by private health insurance at a negotiated contractual rate of \$668.00.

It is also important to appreciate just because a medical bill has been paid by private health insurance does not necessarily mean the amount paid was the reasonable value of the service. Unscrupulous medical providers are adept at "unbundling" charges and manipulating billing codes to overcharge for services. For example, a provider will bill a la carte services for diagnostic procedures which would otherwise be coded to an all-inclusive code to maximize reimbursement from third party payors. This practice is especially rampant in the workers' compensation setting where providers try to circumvent the statutory fee schedule. A medical billing expert should also be utilized in any case where a recovery company is involved such as The Rawlings Group utilized by Kaiser. In Ms. Michalski's experience, the lien amounts provided by Rawlings are not reliable. Accordingly, it is good practice to obtain copies of the actual Kaiser bills and cancelled checks for any outside

treatment paid to a non-Kaiser facility.

The value of a medical billing audit to the defense cannot be understated. It can strengthen the defense position at the negotiating table, encourage early resolution, and prevent runaway jury verdicts. At Tyson & Mendes, we always recommend giving a defense number even when liability is disputed. A medical billing expert who presents testimony regarding reasonable value as a concept rooted in methodology and utilized in the private healthcare industry gives the jury something they can relate to providing the jury a foundation to gravitate towards the defense number rather than the plaintiff's number based on fantasy. In other words, as Ms. Michalski would say, "jurors get it."

ABOUT THE AUTHOR

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